IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 408 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE J.R.VORA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

SUBHASHCHANDRA PURANSING CHAUDHARI

Appearance:

1. Criminal Revision Application No. 408 of 2000

MR BY MANKAD PUBLIC PROSECUTOR for Petitioner No. 1

MR YOGESH S LAKHANI for Respondent No. 1

CORAM : MR.JUSTICE J.R.VORA

Date of decision: 23/10/2001

ORAL JUDGEMENT

#. This Revision Application is filed by the State applicant being aggrieved and dissatisfied by the order of learned Additional Sessions Judge, Baroda passed on 24.5.2000 in Criminal Revision Application No.64/2000, by

which learned Additional Sessions Judge set aside the order of Judicial Magistrate First Class, rejecting an application of present respondent for the custody of muddamal truck and learned Additional Sessions Judge, Baroda after setting aside the order of Judicial Magistrate First Class, Baroda directed the Police Station or Forest Officer to hand over the truck No.GJ-1-UU-7381 to the present respondent and, hence, this Revision Application by the State.

#. The facts of the case goes to show that the present respondent is the owner of truck bearing No.GJ-1-UU-7381 and was found transporting forest produce in the said truck. The said truck was seized by the police of Varnama Police Station in Crime Register No.I-24/2000 because the same was transporting forest produce i.e. Kher wood. After seizing of the truck by the police on 17.2.2000 the same was handed over to Forest Department for the disposal according to law. However, in the meantime, the present opponent filed an application before learned JMFC, Baroda under Section 451 of Criminal Procedure Code for the possession of the truck. During the trial learned JMFC after obtaining opinion from Investigating officer and after hearing the parties came to the conclusion that the offence charged against the accused was in respect of the Forest Act and according to Section-61(D) of the Forest Act, only Sessions Judge can pass order in respect of the muddamal seized and, hence, application of the present opponent came to be dismissed on 4.4.2000. The opponent No.1 thereupon filed a Criminal Revision Application No.64/2000 in the Court of Sessions Judge at Baroda. The learned Additional Sessions Judge, Baroda after hearing both the parties came to the conclusion that by virtue of Section 54 of the Indian Forest Act the Magistrate has power to dispose of the property according to law and Magistrate misguided himself by reading Section 61(D) of the Indian Forest Act that the the Sessions Judge have power to release the truck when the order is passed by any forest authority. The learned Additional Sessions Judge came to the conclusion that the learned JMFC misguided himself by reading Section 61(D) of the Indian Forest Act, when he has power under Section 54 of the said Act to release the truck and, therefore, the learned Additional Sessions Judge set aside the order passed by the learned JMFC on 4.4.2000 rejecting the application of present opponent and directed the concerned Police Officer or Forest Officer to hand over the custody of the muddamal truck to the opponent herein on verifying the papers and furnishing bonds of Rs.2 lacs. The said order is challenged in this Revision Application.

#. Learned APP Mr.B.Y.Mankad on behalf of the State and learned advocate Mr.Y.S.Lakhani, for the respondent were heard.

#. The learned advocate Mr.Mankad submitted that the learned Additional Sessions Judge has erred in placing reliance on Section-54 of the Indian Forest Act because the same is deleted by the State of Gujarat vide amendment in the Forest Act vide Indian Forest (Gujarat Amendment) Act, 1963 and now therefore the Magistrate have no power to deal with the property which is seized for transporting the forest produce for which an offence under the Forest Act is committed. The property in question that is muddamal truck is required to be dealt by Section 61 of the Forest Act as amended by the State of Gujarat, wherein only competent authority of the Forest Department is empowered to deal with the muddamal and an appeal is provided against the order of such competent authority to the Court of Sessions. Therefore, it was urged that the learned Additional Sessions Judge placed reliance on the provision that is Section 54 of the Indian Forest Act, which is not in operation in the State of Gujarat. It was urged, therefore, that the order impugned is required to be set aside.

#. On the other hand, the learned advocate Mr.Lakhani argued that the police seized the truck and what was charged against the accused were the charges under the Penal Code i.e. Section 379. Muddamal truck was in custody of police and, therefore, the Magistrate had powers to deal with the property under Section 451 and 457 of the Criminal Procedure Code. It was urged that therefore even if Section 54 is not in operation in the State of Gujarat the order of learned Additional Sessions Judge requires no interference.

#. Having heard learned counsel and perusing the record it clearly appears that an offence for transporting of the Kher wood in muddamal truck is registered against the accused under Sections 41 and 42 of the Indian Forest Act. In the State of Gujarat vide Amending Act, 1983 the operation of Section 54 of the Indian Forest Act which empower the Magistrate to direct the disposal of the property according to law has been deleted and in place Section 61 (A) (B) (C) (D) was substituted. Section-61 (A) clearly indicates that where a forest offence believed to have been committed in respect of any forest produce, the Officer seizing the property under Sub-Sec .(1) of Sec.61 shall produce it, without any delay before an officer authorised by the State Government to deal

with such property. Sub-Sec.(2) of Section 61(A) indicates that when such property is produced before such competent officer and he is satisfied that forest offence is committed in respect of such property, irrespective of the fact that whether prosecution is or is not instituted for the commission of such forest offence, order confiscation of the property. Procedure for passing an order is provided under Section 61 (B) of the Indian Forest Act as amended by the State of Gujarat. A right of appeal against this order is also provided by Section 61 (D) to the Sessions Judge. It is, therefore, amply clear that since Section 54 of the Indian Forest Act is deleted by the Gujarat Amendment Act, 1983 the Magistrate shall not have any power to deal with the property which is seized under Section 61 (A) of the Indian Forest Act as amended by the State of Gujarat. Learned Additional Sessions Judge misguided himself by Section 54 of the Indian Forest Act which is not in operation in the State of Gujarat and has been deleted by the Amending Act, 1983.

#. In this view of the matter, the order of learned Additional Sessional Judge, Baroda which is impugned in this Revision is required to be set aside.

#. In view of above discussion this Revision of the State is allowed. The order impugned of the learned Additional Sessions Judge, Baroda passed on 24.5.2001 in Criminal Revision Application No.64/2000 is set aside and the application of the opponent for the interim custody of muddamal truck stands rejected. However, if custody of the muddamal truck is handed over to opponent No.1, the same shall be handed over back to the competent authority as indicated in Sub-Sec.2 of Sec.61 (A) of the Indian Forest Act, as amended by the State of Gujarat, within one months from today. Rule is made absolute to that extent.

(J. R. VORA, J.)

kks